IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4861 OF 1996

MAHARASHTRA STATE WAREHOUSING)
CORPORATION, having their Head Office)
at 583/B, Gultekadi, Market Yard,)
PUNE 411 037.)PETITIONER

VERSUS

1. GOODS TRANSPORT LABOUR BOARD FOR)
GREATER MUMBAI, having their office)
at 102/103, Steel Chambers, Devji)
Ratansey Marg, MUMBAI 400 009)

2. SHRI N. G. GAWADE, Inspector, Goods)
Transport Labour Board for Greater)
Mumbai, 102, Steel Chambers, D.R.Marg
MUMBAI 400 009.)

3. MAHARASHTRA RAJYA MATHADI TRANSPORT)
& GENERAL KAMGAR UNION, having their)
office at Jivraj Bhanji Shah Market)
3rd floor, Near Masjid Station,)
MUMBAI 400 009.)

4. THE COMMISSIONER OF LABOUR)
MAHARASHTRA STATE, 7th floor)
Commerce Centre, Near)
Airconditioned Market, Tardeo
MUMBAI 400 034)

5. STATE OF MAHARASHTRA).. RESPONDENTS

Ms. S.I. Shah for petitioners
Mr. A.V. Bukhari for respondents 1 & 2
Mr. S.M. Dharag for respondents 3
Ms. S.S. Bhende, AGP for respondent 5

CORAM:-SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.
DATE ON WHICH THE
JUDGMENT RESERVED:-05/09/2006
DATE ON WHICH THE
JUDGMENT DELIVERED:22/09/2006

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. The petitioner is a statutory Corporation established under the provisions of the Warehousing Corporations Act, 1962 ("Corporation's Act", for

short). Respondent 1 is the Goods Transport Labour Board for Greater Mumbai ("the said Board" for short) constituted under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 ("the Mathadi Act", for short). Respondent 2 is the Inspector of the Goods Transport Labour Board for Greater Mumbai. Respondent 3 is the Maharashtra Rajya Mathadi Transport & General Kamgar Union ("the said Union", for short).

2. The petitioner has various warehouses all over the State of Maharashtra. One such warehouse is situated at Plot No. 4, M.I.D.C. Taloja, Taluka Panvel, Dist. Raigad. According to the petitioner the said warehouse is the custom bonded warehouse wherein the goods imported into India by various importers are stored as per the provisions of Section 62 of the Customs Act. It is the petitioners' case that on payment of the custom duty and warehouse charges the said goods are allowed to be removed from the said warehouse. According to the petitioner various importers clear the said goods on payment of custom duty through their custom house agents. It is the petitioners' case that either the said importers or the said

custom house agents make arrangement for the purpose of depositing the said goods in the petitioners' warehouse and also for removing the said goods from the petitioners' warehouse and the transportation charges are borne by the said importers and/or the said custom house agents. In short it is the case of the petitioner that the responsibility of arranging for the transportation for the purpose of loading and unloading of the said goods is of the importers/custom house agents and the petitioners' main function is to provide warehouse facilities and the space for the said purpose.

3. The petitioner has challenged in this petition notice dated 7/6/94 issued by the said Board and the notice dated 11/8/93 issued by the Inspector, Latur Mathadi and Internal Kamgar Mandal, Latur and Complaint No. 30 of 1994 filed by the 1st and 2nd respondent against the petitioner in 1st Labour Court, Thane.

4. Notice dated 7/6/94 is issued by the said Board stating that the petitioner has not allowed one Potkar who is a registered labourer to work. It is further stated that work of loading and unloading

is the responsibility of the petitioner. However, the petitioner is trying to avoid making payment of wages to the labourers. By this notice, the petitioner has been called upon to pay wages within 7 days to the labourers of Toli No.1365 who are working with the petitioner.

5. Show cause notice dated 11/8/93 states that Inspector of the Latur Mathadi and Internal Kamgar Mandal visited the Udgir godown of the petitioner on 27/7/92. A written notice was given to the petitioner to pay wages. The petitioner failed to do so. By this show cause notice, the petitioner is called upon to submit written explanation within seven days failing which, it is stated that, suit would be filed to recover the wages.

6. Complaint dated 9/10/94 is filed in the 1st Labour Court, Thane by the Inspector of the said Board against the petitioner. It is inter alia alleged in the said complaint that the petitioner is carrying on operation of loading and unloading at its godown at Taloja. It is registered with the said Board and, its registration number is 2401. The registration is done on 25/2/91. It is stated that the petitioners' establishment is registered

as a registered employer and it cannot be said that only particular godown is registered as a registered employer. It is further stated that all godowns within the jurisdiction of the said Board are required to be registered with the said Board. Godowns in greater Bombay, Thane and Raigad District which come within the jurisdiction of the said Board are required to comply with the provisions of the Mathadi Act and the scheme made thereunder. It is alleged that the petitioner is complying with the provisions of Clause 30(2), 30(4) and 30(5) of the said scheme so far as its godown at Vashi is concerned but it is not complying with the same at its godown at Taloja. It is stated that, therefore, the petitioner is guilty of violation of the said clauses which is punishable under clause 44 of the said scheme. It is also stated that the petitioner has instructed Mathadi workers of Toli No. 1365 to collect wages from Customs directly which is against the provisions of the Mathadi Act and the scheme. The complaint, therefore, seeks issuance of process and action in accordance with law.

7. We have heard Ms. Shah, the learned counsel appearing for the petitioner. She took us through

the provisions of the Corporations Act. She also took us through the affidavit of Dr. S.K. Sharma, Chairman and Managing Director of the petitioner Corporation. Ms. Shah submitted that the main object of the petitioner is to provide storage space. It provides handling and transport facility by appointing a contractor on behalf of the depositors. The petitioner operates bonded warehouses all over the State. In these warehouses goods imported by Custom House Agents are deposited till custom clearance. In General Warehouses the petitioner provides specific storage facility for storage of foodgrains, fertilisers and other commodities and the depositors make their own arrangement for loading and unloading of the said goods either through their own labourers or through handling and transport contractors appointed by the petitioner for the benefit of the depositors.

8. Ms. Shah contended that in all warehouses of the petitioner, the petitioner has engaged handling and transport contractors who are registered with the said Board under the provisions of the Mathadi Act and the said scheme. Ms. Shah pointed out that the handling and transport contractors are under an obligation to engage the labourers through

the said Board. There is no employer employee relationship between the petitioner and the said labourers. The wages of the said labourers are fixed by the said Board and are paid by the handling and transport contractors. The petitioner is, therefore, not required to register its warehouses under the Mathadi Act.

9. Ms. Shah drew our attention to entry 13 of the schedule of the Mathadi Act. She submitted that this entry does not include any establishment which deals with storage and hence the petitioner's establishment is not covered by it as it is only concerned with storage. Ms. Shah referred to amended clause 14A of the said scheme and contended that as per this clause commission agent, lorry supplier, clearing agent and management of warehouses are required to be registered with the said Board. Accordingly contractors are required to be registered with the said Board but since the petitioner is not covered by the definition of the term 'employer' as found in the Mathadi Act, requirement of registration is not applicable to it. Ms. Shah referred to Section 24 of the Corporation's Act, which states the functions of the State Warehousing Corporation and submitted

that loading and unloading of goods is not the function of the State Warehousing Corporation.

10. Ms. Shah further contended that the petitioner has addressed a representation to the State Government dated 25/2/91 stating that it is not covered by the Mathadi Act and that this issue may be finally decided by the State Government. Ms. Shah made a grievance that the State has still not considered the said representation. Ms. Shah drew our attention to Section 5 of the Mathadi Act and contended that as per this provision where any question as to whether any scheme applies to any unprotected workers or employers arises it is for the State Government to take a decision thereon after consulting the Advisory Committee. It is not for the Court to decide whether the Mathadi Act applies to the petitioner or not.

11. Ms. Shah pointed out that the State Government has exempted certain warehouses from registration under the Mathadi Act in the light of circular dated 27/5/05. The State Government should have likewise exempted the petitioner.

12. Ms. Shah relied on the judgment of the

Supreme Court in Maharashtra Rajya Mathadi Transport and Central Kamgar Union v. State of Maharashtra & Ors., 1995 II CLR 217, where the Supreme Court was concerned with the question whether Hundekaris are required to register themselves under clause 14 of the scheme. The Supreme Court held that the Board can register them only where it is established that they are the owners of the establishment where they are carrying on the business either having ultimate control over such establishments or being entrusted with the carrying on the affairs of such markets or establishments and not otherwise. Ms. Shah contended that the petitioner has no ultimate control over the activity carried on in the warehouse and hence it is not required to register itself with the said Board. Ms. Shah contended that in the circumstances this is a fit case where this court should quash the impugned notices and the complaint.

13. We have also heard Mr. Bukhari, the learned counsel for the 1st respondent. Mr. Bukhari at the outset pointed out that notice dated 11/8/93 which is sought to be quashed has nothing to do with the petitioner’s warehouse at Taloja which is

the subject matter of the complaint. Mr. Bukhari pointed out that the inspection report annexed to the petition pertains to inspection of the petitioners warehouse at Udgir Latur. Notice dated 7/6/94 pertains to non-payment of wages to workers and it calls upon the petitioner to pay the wages at the office of the said Board. These two documents have no relevance to the aspect of non-registration of the petitioners warehouse at Taloja. These two notices are therefore, wrongly annexed to the petition.

14. Mr. Bukhari contended that the petitioner has not made out any case for interference by this court. He submitted that the petitioner is a body corporate. It is the creation of a statute. It must register itself as a whole. All godowns within the jurisdiction of the said Board are required to be registered with the said Board. There is no question of some of its warehouses being registered and others not being registered.

15. Mr. Bukhari took us through the provisions of the Corporations Act and submitted that there is a great similarity between the functions of the Central Warehousing Corporation and the State

Warehousing Corporation. He then took us to the representation dated 25/2/91 addressed by the petitioner to the State Government. Mr. Bukhari pointed out that this representation is signed by the Chairman and the Managing Director of the petitioner. In this representation the petitioner has stated that the Central Warehousing Corporation's petition as regards registration is pending in this court and a reference has been made to the State Government to get a clear position about the applicability of the Mathadi Act. It is further stated that the final decision of the State Government in this connection would be binding on the petitioner. Mr. Bukhari pointed out that thereafter the State Government has pursuant to the direction of this court considered the case of the Central Warehousing Corporation and taken a decision that in case of Central Warehousing Corporation the provisions of the Mathadi Act are applicable. Mr. Bukhari contended that the petitioner is, therefore, estopped from contending now that the Mathadi Act is not applicable to it.

16. Mr. Bukhari then pointed out that the Mathadi Act was enacted to protect unprotected workers who had no security of jobs and who were exploited by

middlemen. He took us to the relevant provisions of the Mathadi Act and the schedule thereof. He also took us to the said scheme and particularly to amended clause 14-A. He contended that the petitioner is concerned with loading and unloading of goods and as such it is covered by the Mathadi Act. He pointed out that in any case as per clause 14-A of the said scheme those who are engaged in the business of management of warehouse are required to register themselves. The petitioner is, therefore, required to register itself. Mr. Bukhari pointed out that the petitioner had made an application for registration of it's warehouse at Vashi and the same is registered with the said Board on 25/2/91. Therefore, the petitioner's warehouse at Taloja must be registered.

17. Mr. Bukhari contended that the petitioner has never pleaded its case of exemption. Even in the instant petition that case is not pleaded. The petitioner has not made any application for exemption. It is only in the affidavit filed in this court that plea of exemption is raised. Mr. Bukhari submitted that the fact that the petitioner is praying for exemption itself establishes that it is covered by the Mathadi Act. He further

submitted that under section 22 of the Mathadi Act exemption could be granted only if the State is satisfied that the unprotected workers employed in any scheduled employment are in enjoyment of benefits which are on the whole not less favourable to such unprotected workers than the benefits provided by or under the Mathadi Act or any scheme framed thereunder. Mr. Bukhari contended that the exemption is not in respect of the establishment or warehouse but it is in respect of a class or classes of unprotected workers of the establishment or warehouse. In this connection Mr. Bukhari relied on the judgment of the Supreme Court in Security Guard Board for Greater Bombay v. Security & Personal Service Pvt. Ltd., 1987 (1) CLR SC 424 and a judgment of this court in Maharashtra Suraksha Rakshak Aghadi v. State of Maharashtra 2002 (4) MLJ 758 where the Supreme Court and this court have so interpreted similar provision contained in Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981. Mr. Bukhari also drew our attention to the judgment of this court in Writ Petition No. 7338 of 2005 decided on 13/3/2006 by Division Bench comprising the then Chief Justice Shri Vyas and Justice Dr. D.Y. Chandrachud. It is observed by

this court that under the Mathadi Act and the scheme the petitioner is required to register itself with the said Board. Mr. Bukhari submitted that this judgment puts all doubts to rest and in the circumstances the petition is liable to be dismissed.

18. Ms. Bhende, the learned AGP supported Mr. Bukhari. She submitted that the petitioner has admitted that by a letter dated 8/2/91, the petitioner has been informed by the said Board that issue in respect of Central Warehousing Corporation was placed before the Advisory Committee and the Advisory Committee has expressed its view that the provisions of the Mathadi Act and the said scheme are applicable to Central Warehousing Corporation. The Committee's recommendations were then forwarded to the Government and the Government made a reference to the Law and Judiciary Department and came to the conclusion that the Mathadi Act and the said scheme were applicable to the Central Warehousing Corporation. Ms. Bhende pointed out that in fact Central Warehousing Corporation has subsequently registered itself and since the petitioner has accepted that it would await the final decision of the Government on Central

Warehousing Corporation and that would be binding on the petitioner, the petitioner is now estopped from submitting that it’s warehouses are not required to be registered.

19. The Mathadi Act was encated to give protection to manual workers employed in certain employments in the State of Maharashtra who had no security of jobs. They were victims of contractors who exploited them. The Mathadi Act was enacted for regulating the employment of unprotected manual workers and to make provision for their adequate supply and full utilization in the employments in which they were engaged. The preamble of the Mathadi Act reads as under:

> "WHEREAS, it is expedient to regulate the employment of unprotected manual workers such as, Mathadi, Hamal etc., engaged in certain employments, to make better provision for their terms and conditions of employment, to provide for their welfare, and for health and safety measures where such employments require these measures; to make provisions for ensuring an adequate supply to, and full

> and proper utilization of, such workers in such employments to prevent avoidable unemployment; for these and similar purposes, to provide for the establishment of Boards in respect of these employments and (where necessary) in the different areas of the State; and to provide for purpose connected with the matters aforesaid".

20. Section 2 (2) of the Mathadi Act defines the term contractor. It reads thus:

> (2) "contractor", in relation to an unprotected workers, means a person who undertakes to execute any work for an establishment by engaging such workers on hire or otherwise, or who supplies such worker either in groups, gangs (tollis), or as individuals; and includes a sub-contractor, an agent, a mukadum or a tolliwala;"

. Section 2 (7) defines principal employer as under:

> (7) "principal employer" means an employer who engages unprotected workers by or through a contractor in any scheduled employment;

. Section 2(9) defines scheduled employment as under:

> (9) "scheduled employment" means any employment specified in the Schedule hereto or any process or branch of work forming part of such employment;

. As per Section 2(11) unprotected worker means a manual worker who is engaged or to be engaged in any scheduled employment.

21. Section 3 of the Mathadi Act makes provision for a scheme for the registration of employers and unprotected workers in any scheduled employment for the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employment. The scheme has to provide for the terms and conditions of work of registered unprotected workers and has to make provision for the general welfare in such employments. Section 5

states that if any dispute arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which shall be taken after consulting the Advisory Committee constituted under Section 14, shall be final. Section 6 provides for constitution of the Board and Section 7 states the powers and duties of the Board. Section 7 states that the Board shall be responsible for administering a scheme and shall exercise such powers and perform such functions as may be conferred on it by the scheme. It further states that the Board may take such measures as it may deem fit for administering the scheme. Section 14 provides for constitution of Advisory Board. Section 22 provides for exemption from the operation of the provisions of the Mathadi Act and any scheme made therein.

. Scheduled employments are found in the schedule appended to the Mathadi Act. Since we are concerned here with entry 13 of the said schedule, we may quote the same.

"13. Employment in connection with the

> loading, unloading and carrying of foodgrains into godowns (sorting and cleaning of foodgrains, filling foodgrains in bags, stitching of such bags) and such other work incidental and connected thereto."

22. We must now refer to the said scheme. Clause 6 of the said scheme provides for the functions of the Board. It is apparent from clause 6 that the said Board has to regulate the conditions of employment and welfare of the manual workers. Apart from ensuring the adequate supply and full and proper utilization of the registered workers, it is required to keep registers of employers and workers. It has inter alia to recover from registered employer's contribution in respect of the expenses of the said scheme, wages levied and any other contributions under the said scheme. It has to maintain and administer the worker's welfare fund and recover from all the registered employer's contribution towards the said fund. It has to maintain its own funds to which all monies received by it has to be credited and the said fund has to be applied for the purposes of the said scheme.

23. Clause 6(11) of the said scheme requires the Board to fix the number of workers to be registered under the various categories. The Secretary of the Board is responsible inter alia for keeping and maintaining registers or records as may be necessary of workers. He is also responsible for allotment of registered workers in the pool who are available for work to registered employers.

24. Clause 14 of the scheme reads as under:

> "14. Registration of employers:- Every employer inserted by Validation Act, 1974 to whom the scheme applies, engaged in receiving, storing, dispatching or transporting of goods by public vehicles in the areas to which the Scheme applies shall get registered with the Board by applying in form 'A' appended to the Scheme within fifteen days from the appointed day, provided, however, that Goods Transport Undertakings coming into existence in any area after the appointed day shall apply for a registration simultaneously on the commencement of their business.

. Clause 14A which was added by amendment reads thus:

> "14A. Registration of Employer:-Every Commission Agent, Lorry Supplier or Management of Warehouse and Clearing Agent engaged in receiving, storing, despatching or transporting of goods by public vehicle in the areas to which the Scheme applies shall get registered with this Board by applying in Form "A" appended to the Scheme, within 15 days from the appointed day provided, however, that the Goods Transport Undertakings coming into existence in any area after the appointed day shall apply for registration simultaneously on the commencement of their business."

. Clause 30 of the scheme provides for obligation of registered employers. It reads thus:

> "30. Obligations of registered employers:-(1) Every registered employer

shall accept the obligations of the scheme."

(2) Subject to the provisions of clause 24 a registered employer shall not employ a worker other than a worker who has been allotted to him by the Secretary in accordance with provisions of clause 9(e).

(3) A registered employer shall in accordance with instructions as may be given by the Board, submit all available information of his current and future labour requirements.

(4) A registered employer shall lodge with the Board, unless otherwise directed, particulars of the tonnage handled by workers on piece rate and such other statistical data as may be required in respect of the registered workers engaged by him.

(5) A registered employer shall pay to the Board, in such manner and at such times as the Board may direct, the levy payable under clause 42(1) and the gross wages due to daily workers and any other amount due to daily workers.

> 6. A registered employer shall keep such records as the Board may require, and shall produce before the Board or such person as may be designated by the Board upon reasonable notice all such records and any other documents of any kind relating to registered workers and to the worker upon which they have been employed and furnish such information relating thereto as may be set out in any notice or directions issued by or on behalf of the Board."

25. We will now examine the claim of the petitioner in the light of above provisions. From the scheduled employment noted in the schedule appeneded to the Mathadi Act, it is clear that work of loading and unloading of the goods, stacking, carrying, weighing, measuring of the goods and other incidental activities are an integral part of the work done by the manual workers employed therein. In fact all the manual workers who are at some stage concerned with the entire process of the movement of goods, are engaged in the scheduled employment. The petitioner has come out with a case that it is merely providing space and is not

concerned with loading and unloading of goods. According to the petitioner loading and unloading of the goods is the responsibility of the contractors or custom house agents. This submission is unacceptable.

26. The definition of the term employer which we have quoted hereinabove clearly covers the petitioner. It covers cases where unprotected workers are engaged by or through a contractor. In such cases it is the principal employer who will have to register himself. Since the manual workers are engaged by the petitioner through the contractors or agents it is the petitioner who is the principal employer and as such covered by the definition of the term employer found in Section 2(3). This can be examined from another angle. If there is no contractor, as per section 2(3) it is the person who has ultimate control over the affairs of the establishment, who would be employer for the purposes of the Mathadi Act. Such person would include any other person to whom the affairs of such establishment are entrusted. Such person may be called an agent, manager or by any other name prevailing in the scheduled employment.

27. There can be no doubt that the ultimate

control over the warehouse is that of the petitioner. We have been shown a number of receipts of payment made by the petitioner to the said Board in respect of the wages to be paid to the workers. We have also been shown a cash memo indicating that a sum of Rs.1,68,545/- was paid in respect of the Vashi Warehouse to the said Board by the petitioner as wages of the workers for the period 11/5/01 to 31/5/01. This indicates that the petitioner has been paying the wages of the workers to the said Board. Therefore, the petitioner is squarely covered by Section 2(3) of the Mathadi Act as it has ultimate control over the warehouse. The Mathadi Act aims at protecting unprotected manual workers who have no job security. It is a beneficial piece of legislation. The term 'employer' must, therefore, be given wide interpretation so as to subserve the object of the Mathadi Act.

28. Besides as per Section 24 of the Corporation's Act to which we shall soon advert, the function of the State Warehousing Corporation is not only to provide the space for storage. The State Warehousing Corporation has inter alia to arrange for facilities for the transport of agricultural

produce and notified commodities to and from warehouses. It has also to act as agent of the Central Warehousing Corporation or of the Government for the purposes of the purchase, sale, storage and distribution of agricultural produce and notified commodities. Therefore, the petitioner cannot be heard to say that it is not concerned with loading and unloading of goods or with arranging facilities for transport of the goods.

29. Clause 14 of the said scheme speaks of regulation of employers. Clause 14-A which we have quoted above is very important. As per this clause even management of warehouses engaged in receiving, storing, despatch or transporting of goods by public vehicles in the areas to which scheme applies have to get themselves registered with the Board by applying in Form-A appended to the said scheme. Clause 14A, therefore, makes the position of the petitioner vis a vis the unprotected manual workers very clear.

30. It is important to note that the petitioner has accepted that registration of its warehouses is a must. Dr. Sharma, Director of the petitioner

has admitted in his affidavit filed in this court that the petitioner made an application dated 25/2/91 to the State Government for registration of its warehouses with the said Board. It is a fact that the petitioner's warehouse at Vashi has already been registered. The explanation given in the affidavit by Dr. Sharma that the petitioner was forced to do, is totally unacceptable to us.

31. We have quoted clause 30 of the said scheme. It states the obligations of registered employers. The said obligations provide the much needed protection to the unprotected manual workers. A registered employer has to inter alia lodge with the Board particulars of the tonnage handled by workers. He has to pay the levy pertaining to the workers and the wages due to them to the Board. He has to keep such records as the Board may direct and produce them before the Board, if required. A registered employer can be held responsible for any lapses on his part. Thus the registration of employer helps in regulating the employment of the unprotected workers. Therefore, an employer cannot avoid registration on flimsy and unsound grounds.

32. We may now refer to the relevant provisions of

the Corporations Act. Section 2 of the Corporations Act defines agricultural produce. It includes food stuffs, cattle fodder, raw cotton, raw jute, vegetable oils etc. Section 3 provides for Central Warehousing Corporation. Section 6 provides for management of Central Warehousing Corporation. Section 11 provides for functions of Central Warehousing Corporation. The functions of Central Warehousing Corporation are inter alia to acquire and build godowns and warehouses at such suitable place in India as it thinks fit; to run warehouses for the storage of agricultural produce; to arrange facilities for the transport of agricultural produce and notified commodities; to act as agent of the Government for the purposes of purchase, sale etc. of the agricultural produce and notified commodities and to carry out such other functions as may be prescribed.

33. Section 18 provides for State Warehousing Corporations. The State Government has to establish with the approval of the Central Warehousing Corporation a Warehousing Corporation for the State. A State Warehousing Corporation is a body corporate. Section 20 provides for Management of the State Warehousing Corporation and

Section 24 provides for functions of the State Warehousing Corporation. There is a great similarity between the functions of the Central Warehousing Corporation and the State Warehousing Corporation as evident from a comparison of Section 11 and Section 24 of the Corporations Act.

34. Both Central Warehousing Corporation and State Warehousing Corporation seek to provide warehousing facilities for warehousing of agricultural produce and certain other commodities and for matters connected therewith.

35. It is evident from the letter dated 25/2/91 addressed by the Chairman and Managing Director of the petitioner to the Principal Secretary, Government of Maharashtra that the said Board has been insisting that the said scheme is applicable to the petitioner’s establishment at Vashi and that the said establishment should be got registered with the said Board. It is stated in this letter addressed by the Chairman and the Managing Director of the petitioner that as on the date on which this letter was written i.e. on 25/2/91, the Central Warehousing Corporation had not got itself registered with the said Board. It is further

stated that by a letter dated 8/2/91 the petitioner had been informed by the said Board that the issue in respect of Central Warehousing Corporation was placed before the Advisory Committee under the Mathadi Act and the committee expressed its view that the provisions of the Mathadi Act and the said scheme were applicable to the Central Warehousing Corporation. It is further stated in the said letter that the committee's recommendations were then forwarded to the Government to take further necessary action.

36. It is admitted in the letter that the Government in the Labour Department made a reference to Law & Judiciary Department and came to the conclusion that the Mathadi Act and the said scheme were applicable to the Central Warehousing Corporation. It is further stated that the Central Warehousing Corporation has filed a writ petition in this court against the applicability of the Mathadi Act and the scheme to it. It is further stated that the workers at Vashi Warehouses have gone on strike and the local officers at the establishment have been asked to persuade the striking employees and their union on the ground that the matter is subjudice before this court in

the case of Central Warehousing Corporation and a reference has been made to the Government to get a clear position about the applicability of the Mathadi Act and the said scheme. It is further stated that the workers may be persuaded to withdraw the strike and await the final decision of the Government which naturally would be binding on the petitioner.

37. It is an admitted position that thereafter the writ petition filed by the Central Warehousing Corporation being Writ Petition No. 4922 of 1990 was disposed of by this court on 7/3/06. This court directed the State Government to consider the Central Warehousing Corporations' representation as per the provisions of law. Accordingly the State Government took a decision that the Mathadi Act and the said scheme are applicable to the Central Warehousing Corporation and the Central Warehousing Corporation has now registered itself. Since it was the stand of the petitioner as evident from the letter addressed by its Chairman and Managing Director to the State Government that it would be bound by the decision taken in the case of Central Warehousing Corporation, we fail to understand as to how the petitioner can now state that it will

not be bound by this decision. Obviously the Chairman and the Managing Director of the petitioner made this statement in the letter dated 25/2/91 because there is similarity between the functions of Central Warehousing Corporation and the State Warehousing Corporation.

38. It is true that under Section 5 of the Mathadi Act disputes regarding application of the scheme have to be decided by the State Government after consulting the Advisory Committee constituted under Section 14. Ordinarily we would have directed the State Government to do so but in the facts of this case where the petitioner has already registered it’s warehouse at Vashi with the said Board and the petitioner’s Chairman & Managing Director has stated that the petitioner would abide by the decision which would be taken by the State Government in Central Warehousing Corporation’s case, we see no reason why the petitioner should wait for any decision from the State Government now.

39. In this connection, we may draw support from the judgment of the Division Bench of this Court comprising Chief Justice Kshitij Vyas and Justice

Dr. D.Y. Chandrachud, in Writ Petition No. 7338 of 2005 delivered on 13/3/06. In that case the petitioner trade-union was representing the Mathadi workers working at various depots of the State Warehousing Corporation. The petitioner had sought cancellation of a tender notice because the petitioner apprehended that the contractor may throw out the workers who were the members of the petitioner union. During the course of hearing it was brought to the notice of the Bench that the said Warehousing Corporation had not registered itself with the Boards constituted under the Mathadi Act for Aurangabad, Srirampur and Satara. This court observed that in view of the definition in Section 2(3) of the Mathadi Act, the State Warehousing Corporation is the employer of the Mathadi workers. This court expressed surprise that the State Warehousing Corporation was not registered despite the obligation contained in the said scheme particularly clauses 14, 20 and 30 thereof This Court referred to the judgment of the Supreme Court in **Maharashtra Rajya Mathadi Transport and Central Kamgar Union's case (supra)** where the Supreme Court was dealing with the Hundekaris who engage Mathadi workers in the scheduled employment. The Supreme Court observed

that if it is established that they are the owners of the establishments where they are carrying on the business and have ultimate control over such establishment or are entrusted with the carrying on the affairs of such establishment they would be employers within the meaning of the Mathadi Act. This court then observed that the practice adopted by the State Warehousing Corporation of not registering with the said Board is contrary to the provisions of the Mathadi Act and the scheme framed thereunder. It is pertinent to note that the learned counsel appearing for State Warehousing Corporation then made a statement that it will apply for registration and that statement was accepted by the court. The counsel for the said Board stated that on receipt of the application for registration, the State Warehousing Corporation shall be registered. There can be no doubt, therefore, that the State Warehousing Corporation is under an obligation to register its warehouse at Taloja with the said Board established under the Mathadi Act and the said scheme. We must also note that the learned AGP Ms. Bhende has supported the stand of the said Board. In the facts of this case, therefore, we feel that it is not necessary to direct the State to take a decision on the

representation of the petitioner.

40. The learned counsel for the petitioners contended that it is possible for the State to exempt the petitioners from the application of the Mathadi Act. In this connection it is necessary to have a look at Section 22 of the Mathadi Act which provides for exemption. The said Section states that the State Government may after consulting the Advisory Committee by notification in the Official Gazette and subject to such conditions and for such period as may be specified in the notification, exempt from the operation of, all or any of the provisions of the Mathadi Act or any scheme made thereunder all or any class or classes of unprotected workers employed in the scheduled employment, if in the opinion of the State Government all such unprotected workers or such class or classes of workers, are in the enjoyment of benefits which are on the whole not less favourable to such unprotected workers than the benefits provided by and under the Mathadi Act or any scheme framed therein. On a fair reading of this provision it is apparent that it is not the employer who is to be exempted but it is the class or classes of unprotected workers who can be

exempted if in the opinion of the State they are in enjoyment of benefits which are on the whole not less favourable to such unprotected workers than the benefits provided by the Mathadi Act and the scheme made thereunder. A similar provision found in Section 22 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 fell for consideration before the Supreme Court in **The Security Guards Board for Greater Bombay & Thane Distt. v. Security & Personnel Service Pvt. Ltd. & Ors., 1 CLR SC 424**. Section 23 of this Act is in pari materia with Section 22 of the Mathadi Act. After considering this provision the Supreme Court held that though agency or agent may apply to the Government for exemption, the exemption to be granted by the Government is not to be of any agency or agent but only of security guards employed in a factory or establishment. Similar view has been taken by this court in **Maharashtra Suraksha Rakshak Aghadi, Bombay & Anr. v. State of Maharashtra & Anr., 2002 (4) MLJ 758**. The ratio of the above judgments would be clearly applicable to the application for exemptions made under the Mathadi Act.

41. In view of the above, we are of the considered

opinion that the petitioner cannot avoid registering it’s warehouse at Taloja. No case is made out for quashing the impugned notices and the impugned complaint. Hence the petition is dismissed.

(SMT. RANJANA DESAI, J.)

(SMT. V. K. TAHILRAMANI, J.)